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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

HYNIX SEMICONDUCTOR, INC., et al.,

Plaintiffs,

v.

RAMBUS INC.,

Defendant.

CASE NO.: CV 00-20905 RMW

**RAMBUS INC.'S TRIAL BRIEF  
PRECLUDING TESTIMONY FROM JOE  
MACRI ON CERTAIN MATTERS**

Judge: Hon. Ronald M. Whyte  
Courtroom: 1  
Trial Date: January 29, 2008

RAMBUS INC.,

Plaintiff,

v.

HYNIX SEMICONDUCTOR INC., et al.,

Defendants.

CASE NO.: C 05-00334 RMW

RAMBUS INC.,

Plaintiff,

v.

MICRON TECHNOLOGY INC. and  
MICRON SEMICONDUCTOR  
PRODUCTS, INC.,

Defendants.

CASE NO.: C-06-00244 RMW

1 **I. INTRODUCTION**

2 The Manufacturers have disclosed Joe Macri to testify on Wednesday, February  
3 20, 2008. Rambus moves to preclude the Manufacturers from questioning Mr. Macri on topics  
4 that (i) are beyond the scope of his prior testimony where the new topic was not previously  
5 disclosed in the September 5, 2007 witness disclosures, or (ii) would elicit improper lay opinion  
6 testimony on the “industry” or lock-in in violation of Federal Rule of Evidence 701. The  
7 problems with Mr. Macri’s disclosed testimony are similar to those decided by this Court with  
8 respect to Andreas Bechtolsheim. For the same reasons adopted in that order, Mr. Macri’s  
9 testimony also needs to be limited.

10 **II. ARGUMENT**

11 **A. The Court Should Preclude The Manufacturers From Eliciting Testimony**  
12 **Beyond the Scope of Mr. Macri’s Prior Testimony.**

13 On September 5, 2007, the Manufacturers disclosed Joe Macri as a trial witness  
14 and stated that he would be expected to testify regarding the subject matter of hearing testimony  
15 at the FTC as well as testimony “regarding JEDEC, including the development and  
16 standardization of DDR2, DDR3, GDDR3, GDDR4, and GDDR5.” Declaration of David C.  
17 Yang in Support of Trial Brief Precluding Certain Testimony from Joe Macri (“Yang Decl.”), Ex.  
18 A (September 5, 2007 Disclosure at C(4)). They also disclosed that he would testify “regarding  
19 the resultant industry lock-in from adoption of the foregoing standards.” *Id.*

20 In the Manufacturers’ witness disclosures attached to the parties’ Joint Pretrial  
21 Conference Statement, filed on January 14, 2008, the Manufacturers belatedly expanded their  
22 disclosures for the anticipated scope of Mr. Macri’s trial testimony. Specifically, the  
23 Manufacturers now disclose that he is expected to testify

24 regarding the matters that have been the subject of his deposition,  
25 hearing and/or trial testimony as well as the subjects identified in  
26 Manufacturers’ Joint Witness Disclosure Pursuant to the Court’s  
27 August 30, 2007 Order, including, *inter alia*: JEDEC’s practices  
28 and policies, including the development and standardization of  
DDR2, DDR3, GDDR3, GDDR4, and GDDR5; lock in; effect of  
Rambus’s behavior on DRAM industry; importance of open  
standards; importance of JEDEC to the industry; the evolutionary  
nature of technology developments at JEDEC; backwards  
compatibility between SDR SDRAM, DDR SDRAM, DDR2

SDRAM, and DDR3 SDRAM.

Of the topics disclosed by the Manufacturers that were not in the September 5, 2007 disclosures, Mr. Macri did not testify previously on the following:

- Lock in *apart from* “the resultant industry lock-in from adoption of the foregoing standards”;
- Importance of open standards;
- Effect of Rambus’s behavior on the DRAM industry;
- Importance of JEDEC to the industry; and
- Policies and practices at JEDEC *before 1997*.

More specifically, to the extent that the Manufacturers’ January 14 disclosure of “lock in” is broader than its earlier disclosure of “the resultant industry lock-in from adoption of the [DDR2, DDR3, GDDR3, GDDR4, and GDDR5] standards,” it is beyond the scope of Mr. Macri’s prior testimony. Based on the Manufacturers’ further disclosure today of trial exhibit 3330 and demonstratives MD272 and MD273<sup>1</sup> for Mr. Macri, it appears that the Manufacturers may wish to elicit detailed additional testimony related to ATI’s lock in with respect to DDR2, which would be beyond the scope of any prior testimony and was not disclosed in the September 5 witness disclosure. Mr. Macri did not previously testify to ATI’s lock in relating to DDR2 with respect to any specific products he personally worked on. Rambus relied upon the representations by the Manufacturers in their September 5 witness disclosure in choosing not to take the deposition of Mr. Macri on ATI’s lock in relating to DDR2. Any such testimony should not be allowed.

With respect to the “importance of open standards,” the Court’s ruling on Rambus’s trial brief to preclude the testimony of Andreas Bechtolsheim suggested that “the importance of open standards” *to the industry* was not a proper matter for lay opinion but that Mr. Bechtolsheim could testify to the importance of open standards to *his own* decision-making. Mr. Macri did not previously testify that he was responsible for selecting the type of memory used in the products of his employer(s). The Manufacturers therefore cannot present any testimony based on Mr. Macri’s personal experience about selecting products based on “open standards.”

Similarly, Mr. Macri did not previously testify as to the “effect of Rambus’s

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<sup>1</sup> MD272 and MD273 are attached to the Yang Declaration as exhibit B.

1 behavior on the DRAM industry” and the “importance of JEDEC to the industry.”

2 For the topic “the policies and practices of JEDEC,” Mr. Macri cannot be  
3 permitted to testify about “the policies and practices of JEDEC” prior to 1997 because he has  
4 offered no prior testimony about that matter. In fact, he likely has no personal knowledge of that  
5 topic since he has testified that the first time he participated in a JEDEC meetings was “the fall of  
6 ‘97.” Yang Decl., Ex. C (FTC trial testimony) at 4581:24-4582:2.

7 **B. Mr. Macri Should Be Barred From Offering Lay Opinion Testimony.**

8 **1. Mr. Macri Should Not Testify About “The Industry.”**

9 Any testimony Mr. Macri could give regarding the view of or impact of certain  
10 events on “the industry” generally (*e.g.*, the importance of JEDEC “to the industry;” the effects of  
11 Rambus’s behavior “on the DRAM industry,” the importance of open standards to the industry,  
12 and the “resultant industry lock-in from adoption of the [DDR2, DDR3, GDDR3, GDDR4, and  
13 GDDR5] standards”) would be beyond his personal experience and would constitute improper lay  
14 opinion in violation of Fed. R. Evid. 701. The Court recognized this problem when it precluded  
15 this industry-based testimony from Mr. Bechtolsheim.

16 **2. Mr. Macri Should Not Testify About Lock In.**

17 In addition to “industry lock in,” the Manufacturers should be precluded from  
18 questioning Mr. Macri about lock in of ATI or any other company. As an initial matter, as  
19 explained above, ATI’s lock in is beyond the scope of his prior testimony. Furthermore, any  
20 testimony Mr. Macri might offer about ATI’s lock in would be improper under Rule 701 for the  
21 additional reason that it would clearly be “based on scientific, technical, or other specialized  
22 knowledge.” *See* Fed. R. Evid. 701; *see also Fresnius Medical Care Holdings, Inc. v. Baxter Int’l*  
23 *Inc.*, No. C 03-1431 SBA, 2006 WL 1330002, \*3 (N.D. Cal. May 16, 2006) (“Lay opinion  
24 testimony is ‘not to provide specialized explanations or interpretations that an untrained layman  
25 could not make if perceiving the same acts or events.’” (*quoting U.S. v. Conn*, 297 F.3d 548, 554  
26 (7th Cir. 2002))).

3. **Mr. Macri Should Not Testify About “The Evolutionary Nature of Technology Developments At JEDEC.”**

Similarly, any testimony by Mr. Macri about “the evolutionary nature of technology developments at JEDEC” is impermissible under Rule 701. Whether a technology development should be characterized as “evolutionary” or “revolutionary” (or perhaps something in between) is properly expert opinion as it is hardly a determination that an untrained layman could make “if perceiving the same acts or events.” *See Fresnius*, 2006 WL 1330002, at \*3. The Manufacturers did not disclose Mr. Macri as a Rule 702 expert on this topic, and so should be barred from eliciting his opinion regarding it.

**III. CONCLUSION**

Rambus respectfully asks the Court to preclude Mr. Macri from testifying beyond the scope of his prior testimony on topics that were not part of the September 5, 2007 witness disclosures. Moreover, Rambus respectfully requests that the Court bar any improper lay opinion testimony about what the industry thought about open standards, “the effect of Rambus’s behavior on the DRAM industry,” the “importance of JEDEC to the DRAM industry,” and “industry lock-in” for DDR2, DDR3, GDDR3, GDDR4, and GDDR5. Similarly, Rambus asks this Court to bar any improper lay opinion on his view of lock in and the “the evolutionary nature of technology developments at JEDEC.”

DATED: February 15, 2008

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